HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 976 OF 2006

1. Smt. Shanti Nath,
   W/o Sri Shivendra Nath Goswami,
2. Avinash Kumar Goswami,
   S/o Sri Shivendra Nath Goswami,
3. Smt. Sumitra Gupta,
   D/o Shivendra Nath Goswami,
   All resident of E.271, Prem Nagar Line Paar,
   Moradabad. .....Applicants.

Vs.

1. Judicial Magistrate, Khatima, District-Udham Singh Nagar.
2. Smt. Kritika Goswami, W/o Sri Avinash Kumar, D/o Indra Nath, R/o 14/7 Rajendra Nagar Khatima, District-Udham Singh Nagar.

Hon'ble Rajesh Tandon, J.

Heard Sri Amish Tiwari, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing of the FIR dated 3rd September, 2006 as well as the charge-sheet and the cognizance having been taken on the basis of the charge sheet vide order dated 27.09.2006 under Section 498-A/323/504/506 I.P.C. and ¾ of the Dowry Prohibition Act.

3. Briefly stated, according to the case of the applicants, applicant no. 2 Avinash Kumar Goswami was

married with Smt. Kritika-respondent no. 2 Goswami on 7.12.2001 according to Hindu Rites and Rituals. Both have resided together and discharged their matrimonial obligations.

4. On 5th April, 2005, respondent no. 2 along with her brother went to her went to her parental house at Khatima and refused to live with the applicant no. 2 without any rhyme or reason.

5. According to the applicant no. 2, he has also moved an application on 04.11.2005 for restitution of conjugal rights in the Family Court Moradabad, which was numbered as Case No. 556 of 2005 Avinash Kumar Goswami Vs. Smt. Kritika Goswami under Section 9 of Hindu Marriage Act.

6. Counsel for the applicant has submitted that after the aforesaid notice, the respondent no. 2 has filed a written statement and as a counter blast to the aforesaid application under Section 9 of the Hindu Marriage Act, has lodged an FIR on 1st September, 2006 after the lapse of two months of the filing of the Written Statement and as such the FIR is a pre-planned FIR in order to frustrate the suit filed by the applicant under Section 9 of the Hindu Marriage Act.

7. On the basis of the charge-sheet, the case was registered as Criminal Case No. 1214 of 2006 State V. Avinash Kumar and others under Section 498-A, 323, 504, 506 I.P.C. and ¾ of the Dowry Prohibition Act and passed the summoning order on 27.09.2006.

8. Counsel for the applicant has also submitted that it is a matrimonial dispute, steps may be taken for reconciliation before the trail in pursuance of the charge-sheet before framing of the charge.

9. In ***Medchal Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

> *"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."*

9. In ***Smt. Husna and others v. State of U.P. and others [2006 (56) ACC 659],*** *it has been observed as under:*

> *"7. The petition is finally disposed of witht eh direction to the petitioners to appear before the Court concerned within 15 days of*

passing of this order and if they do so, the Court will permit them to file appearance bonds to his satisfaction for their regular appearance in the case."

11. Considering the request of the applicant Presiding Officer is directed to take steps for reconciliation in pursuance of the charge-sheet issued against the applicants.

12. Taking into consideration the matrimonial dispute between the parties, it will be desirable in the interest of justice that on the surrender of the applicants, they may be released subject to furnishing a personal bond as the sureties to the satisfaction of the Magistrate concerned for their regular appearance as the applicants no.1 and 3 are women and the applicant no. 2 has already initiated the proceedings under Section 9 of the Hindu Marriage Act.

13. Subject to the observations with regard to personal bond, application under Section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

01.12.2006
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